NGERANTER RIPAI

v.

PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK, SIBU
CHONG SIEW FAI J
[CRIMINAL APPEAL NO. 16 OF 1989]
12 JANUARY 1990

CRIMINAL PROCEDURE: *Driving without valid licence - Section 33 Commercial Vehicle Licensing Board Act - Guilty plea - Vehicle forfeited - Appeal on questions of ownership, defective charge and forfeiture.*

The appellant was charged under s. 33 of the Commercial Vehicle Licensing Board Act (the Act) in relation to driving without a valid licence. He pleaded guilty and was convicted and fined RM700 the motor vehicle was forfeited. This is an appeal against the conviction and order of forfeiture on the basis of the appellant not being the registered owner, the omission to mention in the charge the commission of the offence, the ambiguousness of the charge and the improper seizure of the vehicle.

Held:

[1] Since the appellant had, in the lower Court, pleaded and maintained he plea of guilty to the offence charged after having understood the charge and the consequences of the plea, there can be no appeal against conviction; see s. 305 Penal Code.

[2] Registered ownership is not an element of the offence under s. 33 of the Act. In addition, the appellant had admitted that the motor vehicle was registered under his name in the registration card.

[3] The omission in the charge, of the commission of the offence was immaterial and the appellant had not been misled by the omission.

[4] Forfeiture provisions must be strictly construed and applied. Taking into account ss. 51(1)(3) and 52 of the Act the motor vehicle had not been seized by officers authorised under the Act.

[Appeal dismissed; order for forfeiture set aside.]

Legislation referred to:
Commercial Vehicles Licensing Board Act 1987, ss. 2, 33, 51(1), (3), 52(1)
Criminal Procedure Code, ss. 156, 422
Penal Code, s. 305

For the appellant - Stephen Chung; M/s. Stephen Chung Advocate
For the respondent - Nik Suhaimi bin Nik Sulaiman, Deputy Public Prosecutor

JUDGMENT

Chong Siew Fai J:

In the Magistrate's Court at Kapit the appellant was charged as follows:

> That you on 14 March 1988 at about 11.05a.m. at Jalan Selirik, Kapit in Kapit District in the State of Sarawak being a driver and registered owner of a motor vehicle to wit a window van bearing Registration Plate No. SC 7334 used the said vehicle as a public service vehicle

without a valid licence granted to you by the Road Transport Licensing Board under s. 33 of the Commercial Vehicles Licensing Board Act 1987 (Act 334) and punishable under the same section.

The appellant pleaded guilty and was convicted and fined RM700 in default one month's imprisonment. The motor vehicle was forfeited.

Against the conviction and the order of forfeiture the appellant now appeals, he having abandoned the appeal against the fine at the hearing this morning.

Altogether there are 8 grounds of appeal. I need only deal with 4 of them.

Under grounds (1) and (2), the appellant complained that the charge was defective in that at the material times he was not the registered owner of the motor vehicle, the owner being one Delta Finance Company Berhad from whom he had hired the motor vehicle under a hire-purchase agreement, and that the learned trial Magistrate has erred in law in convicting him on the defective charge and based on the 'incorrect' facts stated above.

Under ground (9) of appeal it was contended that the charge was ambiguous and therefore defective in that there was no mention of commission of any offence and the appellant was embarrassed in pleading to the defective charge and that a miscarriage of justice had resulted.

At the lower Court the appellant, as the record shows, pleaded and maintained the plea of guilty to the offence charged after having understood the charge and the consequences of the plea. As such and, subject to what I shall say in a moment about the charge, there can be no appeal against conviction. See s. 305 of the Penal Code.

As regards the charge, registered ownership is not an element of the offence under s. 33 of the Commercial Vehicles Licensing Board Act 1987 (the Act). But its inclusion in the charge in the instant case, though unnecessary, had not misled the appellant nor occasioned a failure of justice. The term "registered owner" is defined in s. 2 of the Act as the person registered as the owner of the motor vehicle under the Road Transport Act 1987, and in the admission of facts presented by the prosecution the appellant admitted that the motor vehicle was registered under his name in the registration card.

As regards the omission to mention in the charge the commission of the offence, it was not shown how the appellant had been misled by the omission. The charge contained all the necessary ingredients of the offence alleged and the facts of the case advanced by the prosecution and admitted by the appellant clearly showed that the offence had been committed. The omission in the circumstance is immaterial (s. 156 of the Criminal Procedure Code). It has also not been shown how the inclusion of "registered owner" in the charge had occasioned a failure of justice (s. 422 of the Criminal Procedure Code).

For the above reasons, the appeal against conviction is dismissed.

Ground (7) of Appeal relates to seizure. It was contended that there was no evidence that the motor vehicle had been properly seized and the motor vehicle therefore should not have been forfeited.

The relevant provisions are sub-sections (1) and (3) of s. 51 of the Act. They read:

51(1) Any motor vehicle in respect of which there has been or there is reasonable cause to suspect that there has been committed any offence against s. 33 or 34 may be seized by any road transport officer or any police officer not below the rank of Inspector at any place.

(2) ...

(3) An order for the forfeiture or for the release of any motor vehicle **seized under subsection (1)** shall be made by the Court before which the prosecution with regard thereto has been held, and an order for the forfeiture of **such** vehicle shall be made if it is proved to the satisfaction of the Court that an offence against s. 33 or 34 has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence.
(Emphasis added)

The words "such vehicle" in s. 51(3) must, in my opinion, mean vehicle seized under subsection (1) thereof.

Forfeiture imposes a severe and harsh penalty on subjects, sometimes even on innocent subjects. Therefore, forfeiture provisions must be strictly construed and applied.

In the instant case under appeal, the statement of facts given by the prosecution and admitted by the appellant, so far as is relevant to the issue in point, reads:

... The vehicle was detained s. 52(1) Commercial Vehicles Licensing Board Act 1987 (Act 334) but was released to the accused as allowed u/s 52(2) Commercial Vehicles Licensing Board Act 1987 (Act 334) few days later.

Section 52 of the Act does not provide power of seizure. Moreover, the facts given by the prosecution do not disclose that the motor vehicle in question had been seized by officer or officers authorised under s. 51(1) of the Act. Since neither the statement of facts nor any evidence establishes that the motor vehicle had been properly seized, the order of forfeiture is bad must be set aside.

In the light of the view I take of the above ground (7), it is unnecessary to deal with the other grounds of appeal.

For the above reasons, the conviction is affirmed but the order for forfeiture of the motor vehicle is set aside.

Also found at [1990] 2 CLJ 273